Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305, titled Medical Dispute Resolution-General, and 133.307, titled Medical Dispute Resolution of a Medical Fee Dispute, a review was conducted by the Medical Review Division regarding a medical fee dispute between the requestor and the respondent named above.

I. DISPUTE

1. a. Whether there should be additional reimbursement of $2,151.52 for date of service 10/03/01.
   b. The request was received on 01/29/02.

II. EXHIBITS

1. Requestor, Exhibit I:

   a. TWCC 60 and Letter Requesting Dispute Resolution dated 01/03/02
   b. HCFA(s)
   c. TWCC 62 forms
   d. Medical Records
   e. EOBs from other carriers
   f. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.

2. Respondent, Exhibit II:

   a. Response to a Request for Dispute Resolution dated 07/16/02.
   b. Reimbursement data
   c. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.

3. Per Rule 133.307 (g) (3), the Division forwarded a copy of the requestor's 14 day response to the insurance carrier on 06/26/02. Per Rule 133.307 (g) (4), the carrier representative signed for the copy on 07/02/02. The response from the insurance carrier was received in the Division on 07/17/02. Based on 133.307 (i) the insurance carrier's response is untimely so the Commission shall issue a decision based on the request.

4. Notice of Medical Dispute is reflected as Exhibit III of the Commission's case file.

III. PARTIES' POSITIONS

1. Requestor:

   a. The Requestor asserts that charges were for facility fees not professional fees. The payment received only represents 49% of the total billed amount. Other workers' compensation carriers reimburse at 85-100%. Additional reimbursement is sought in the amount of $2,151.52 for the date of service 10/03/01.

2. Respondent: letter dated 07/03/02

   a. The Carrier's response was untimely.

IV. FINDINGS

1. Based on Commission Rule 133.307(d) (1) (2), the only date of service eligible for review is 10/03/01.

2. The provider billed $4,387.52 for date of service 10/03/01.

3. The carrier paid $2,236.00 for date of service 10/03/01.

4. The amount in dispute is $2,151.52 for date of service 10/03/01.

5. The carrier denies additional reimbursement on the submitted EOB as "M-NO MAR, REDUCED TO FAIR AND REASONABLE."

V. RATIONALE

Medical Review Division's rationale:

Per the Texas Worker's Compensation Act and Rules §413.011(d), "Guidelines for medical services fees must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. The commission shall consider the increased security of payment afforded by this subtitle in establishing the fee guidelines."

The medical reports indicate that the services were performed on a worker with the ICD-9 Code of 354.0. The EOB(s) from other insurance carriers submitted by the Requestor show similar ICD-9 Codes. All of the EOB(s)submitted do show that the Requestor was paid at 100% of the billed charges.

However, the additional information provided by the Requestor should not be overlooked. The Requestor has provided a chart that indicates what all the other workers' compensation carriers in Texas pay on an average. In a comparison of the three charts titled "List of Percentage Payments by Texas WC Insurances" and separated by years (1998-1999, 1999, and 2000), it was noted that there has been a consistent payment policy of many of the carriers to pay approximately 85% of the billed charges. There are carriers who have paid less and some that have paid more. There has also been a decline in the number of carriers who pay at 100% or above from 1998 to 2000. In 1998-99, 28% of the carriers paid at or above 100% and in 2000 only 13% paid at this rate. Also, the rate of payment below 85% for these same years has ranged from 28% to 31%. The figure for the carriers who paid between 86% to 100% for 1998-99 is 16% and for 1999 and 2000, it is 13% each. The provider has supplied this information in his packet to prove his fees are fair and reasonable. However, the charts only indicate that there is a vast range of what carriers are willing to pay but does not demonstrate or justify that the fees requested are fair and reasonable.

Rule 133.307 (g) (3) (D) places certain requirements on the provider when supplying documentation with the request for dispute resolution. The provider is to discuss, demonstrate, and justify that the payment amount being sought is fair and reasonable. Commission Rule 133.304 (i)(1-4) places certain requirements on the carrier when reducing the billed amount to fair and reasonable. Regardless of the carrier's methodology or lack thereof, or a timely or untimely response, the burden remains on the provider to show that the amount of reimbursement requested is fair and reasonable.

Because there is no current fee guideline for ASC(s), the Medical Review Division has to determine, based on the parties' submission of information, who has provided the more persuasive evidence. As the requestor, the health care provider has the burden to prove that the fees paid were not fair and reasonable. In this case, the provider submitted EOB(s) from other carriers that indicates those carriers paid 100% of the billed charges. The willingness of some carriers to reimburse at or near the billed amount does not necessarily document that the billed amount is fair and reasonable and does not show how effective medical cost control is achieved, a criteria identified in Sec. 413.011(d) of the Texas Labor Code.

The provider's documentation fails to justify or demonstrate that the fees requested are fair and reasonable. Therefore, no further reimbursement is recommended.

The above Findings and Decision are hereby issued this 7th day of August 2002.

Michael Bucklin, LVN
Medical Dispute Resolution Officer
Medical Review Division

MB/mb